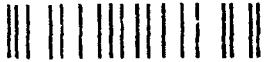


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EMERGING GERMAN SECURITY POLICY  
- THE DISPUTE ON 'OUT OF AREA' EMPLOYMENTS -

BY

Oberst i.G. Hans-Georg Atzinger  
German Army

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**- THE DISPUTE ON 'OUT OF AREA' EMPLOYMENTS -**

**AN INDIVIDUAL STUDY PROJECT**

**BY**

**Oberst i.G. Hans-Georg Atzinger**

**German Army**

**Dr. Thomas-Durell Young**

**Project Advisor**

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## ABSTRACT

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The Gulf War forced Germany to face the question of their responsibility in world affairs. Germany was asked to contribute to the security and stability of the Middle East region. They declined to do so. Germany was fixed on unification therefore the request of the allies for military assistance came as a surprise. A violent debate then emerged on whether unified Germany should take increased responsibility in the world. This debate is still in progress. The war in Southwest Asia was a 'cross-roads' of German security policy. The government now desires to deploy German forces 'out of area' for international peace and conflict resolutions. However, the opposition party still insists on 'blue helmet' missions only. There are different reasons for Germany's reluctance to commit forces alongside its allies. Pacifism and anti-Americanism, represented by a politically active minority, strongly influenced the public opinion during Desert Storm. This rigid and self-righteous moralism, was not the major reason for military reluctance. Recent German history and a political interpretation of the 'Basic Law' (constitution) were the real reasons for Germany's hesitancy. The 'Basic Law' is ambivalent regarding guidelines for security policy. However, experts in constitutional law hold the position that there are no legal constraints. Therefore, the government must solve a political rather than a constitutional problem.

*"...liberty and peace have their price.  
These values need to be protected and, if  
necessary, they must be actively defended -  
not only within Western societies,  
but worldwide.*

*President Richard von Weizsaecker  
on 29 January 1991*

## TABLE OF CONTENTS

Introduction .....	1
Risk Sharing - What Was Expected From Germany.....	3
The Confusion In The Public Opinion.....	4
The Gulf War - Cross-Roads Of German Security Policy.....	7
Moralism - Obstacles Of German Policy.....	9
Restraints Caused By Recent German History.....	12
The Ambivalence Of The Basic Law.....	17
Politics Plays A More Important Role In Security Policy.....	22
Position Of The Christian-Liberal Coalition.....	26
Position Of The Social Democratic Party.....	28
Summary And Recommendations.....	32
Endnotes.....	35
Bibliography.....	39

## INTRODUCTION

Europe is undergoing fundamental changes. What the future map of Central, East and Southeast Europe will eventually look like can not be predicted. Revolutionary developments are still in progress. However, when the Berlin Wall came down, it was obvious that an essential part of the German security policy had lost its raison d'etre. For decades Germany's security policy was bipolar. Germany's integration in the Western Alliance ensured that defense efforts were focused on the threat caused by the superior military power of the Warsaw Pact.

The unification of Germany, one of the most outstanding events during the present transition period, impressively marked the end of the Cold War. The common values of the Western Democracies achieved a tremendous victory over the doctrine of Communism. At the July 1990 NATO Summit in London, the heads of the governments agreed to start a new era of cooperation with the members of the Warsaw Pact. They also decided that NATO will shift from its emphasis on the military side towards a more political oriented Alliance.<sup>1</sup>

The 'Treaty on Conventional Forces in Europe' (CFE) signed in November 1990 was a further important step to decrease East-West confrontation. This historical event aimed at more stability and security in Europe based on an agreement for a reduction and balance of conventional forces. Germany, the most concerned country of the Cold War, gained the greatest benefit

from the CFE and other political progress which occurred from fall 1989 until fall 1990. These extremely successful political changes enforced euphoric thoughts that war in Europe would be abandoned forever. All political rivalries and conflicts would be solved diplomatically or by means of crisis prevention. Thoughts on military employments out of the NATO area and constitutional constraints were not discussed.<sup>2</sup>

With the Iraqi invasion of Kuwait, the fundamental question arose of whether Germany should take increased responsibility and contribute to the security and stability of a region of vital interest to European countries. The justified expectations of the allies, as well as the friendly nations, for a German military contribution struck the government, the political parties and the society by surprise. A violent debate emerged which was focused on the employment of German forces 'out of area'. This debate is still in progress today.

This paper discusses the German political and social background that explains their attitude during the Gulf War. It analyzes historical restraints and legal constraints to the 'out of area question'. It also analyzes the political interpretation of those historical and legal issues that affect future German security policy. Finally, recommended options for a new security policy are presented.

## RISK SHARING - WHAT WAS EXPECTED FROM GERMANY

When Saddam Hussein occupied Kuwait in August 1990, the reaction within the German public was, as it had been during previous conflicts in this region, not extremely excited or concerned. Politicians and the media condemned the aggression. Public opinion was confident that this conflict would be contained by the concerned Arabic countries and the strong military presence of the United States.

The deployment of a German Naval unit, consisting of five minesweepers, to the Mediterranean must therefore be considered as a symbolical act rather than as effective military support. A German deployment to the Persian Gulf that the United States quite modestly asked for, would have been both a reasonable military reenforcement of the Coalition Naval Forces and a contribution to risk sharing.<sup>3</sup>

Many Germans did not realize in this stage of the conflict how important this 'risk-sharing' was in order to demonstrate solidarity with their allies; the same allies who had shared the burden of the common defense for decades. This was particularly important as the United States had so strongly supported the German unification.

But inhibited by unsolved constitutional questions regarding the employment of the German Armed Forces the government did not want to take on the responsibility of this far-reaching political decision. It is evident that a majority in politics and

society underestimated the danger of an escalation which might indirectly affect Germany. They also underestimated the consequences concerning the damage of Germany's reputation as a reliable partner and allies.<sup>4</sup>

While operation Desert Shield was conducted by Coalition Forces under the leadership of the United States, German politics focused on the unification scheduled for 3 October 1990. In addition to this challenging mission, the first common and free elections in 57 years for all of Germany within its post-war borders had to be prepared. Because of the short time available to design, organize, and execute these overwhelming tasks, the politicians, the administration and the political parties were totally focused on internal political affairs. However, these particular circumstances only partly justify the lack of solidarity caused by the absence of risk sharing and the attitude demonstrated by a considerable part of the population. This unique historical event and the ensuing challenges explains, in part, why Germany was more focused on its internal problems rather than the escalation at the Persian Gulf.<sup>5</sup>

### THE CONFUSION IN THE PUBLIC OPINION

When on 17 January 1991 the operation Desert Storm was started to free Kuwait, the reaction in the German society was one of amazement. The majority of the population identified this event as the beginning of the Gulf War. That the actual outbreak

of this war was actually caused by the invasion of an independent country, subjected to brutal war crimes against the civilian citizen of Kuwait, was all but forgotten. Many People did not recognize that, according to the resolution of the United Nation's Security Council, the coalition's use of military power was a means of last resort. They also did not realize that Saddam Hussein had been given more than five months to withdraw from Kuwait. But most incredible was the attitude of the Peace Movement, alternative groups, and left wing politicians. They blamed the United States as the aggressor and responsible for this war. Although pro-American enthusiasm was not expected, the attitude of many young German citizens embarrassed the political leadership in Germany and insulted the Allies.

A mixture of horror, fear and 'larmoyant' may describe the emotions which emerged during the first days of the Air Campaign. "I have fear" was a term which identified people with an indifferent political opinion as well as people with a clear pacifist attitude. The sentence "Ich habe Angst" (I am in fear) was shown on banners and could be heard on many occasions. The Peace Movement from the early eighties celebrated a short but powerful comeback. They utilized all the irrational, indifferent fears of many peoples in order to push their political ideas which still were based on a radical pacifism and anti-Americanism. For a while it seemed that "fear" became a national virtue. Instead of mastering their fear, they let themselves be driven by their emotions. After a couple of weeks this phenomenon

disappeared. People became aware that the troops involved in this war. their relatives and the civilians of Iraq and Israel had actual reasons to be afraid and concerned.<sup>6</sup>

The media, especially the television. contributed to the confusion rather than clarifying the situation by critical, objective reports. The overwhelming extra broadcastings were mostly unprofessional and boring. They showed the same videos (mostly taken from CNN) frequently. Blaming the military censors on both sides for not having enough "pictures" does not justify this lack of qualified background information.<sup>7</sup>

"Many intelligence reports in war are contradictory; even more are false, and most are uncertain. What one can reasonably ask of an officer is that he should posses a standard of judgment, which he can gain only from knowledge of men and affairs and from common sense."<sup>8</sup>

This fundamental knowledge, written by Clausewitz about 160 years ago. demonstrates impressively that it has always been a difficult process to gain objective information in war. On the other hand, in times of crisis or war the need to gain any information dramatically increases. Journalists usually bear a great responsibility toward society, and require a high ethical standard. The guideline should therefore be: The more serious a subject they are dealing with the more they should be challenged to make judgments based on "knowledge of men and affairs and...common sense."

The written press fulfilled these high demands. the press : the television reports did not. In the aftermath of the conflict,

about the Gulf War, many journalists criticized not only the censors, but also style and contents of most television reports.<sup>9</sup>

### THE GULF WAR - CROSS-ROADS OF GERMAN SECURITY POLICY

Indifference, fear, anti-American sentiment, and poor reporting in the media caused serious doubts about Germany's reliability. The government's hesitation to state clearly and unmistakably that Germany stood behind the US President's decision to start the offensive, increased the crisis of confidence between Washington and Bonn.

But the 'speechless' government at the beginning of Desert Storm affected the German internal policy, too. In this critical time the citizens were perfectly right to expect leadership from their government. A pro-American address, delivered by the Federal Chancellor on 17 January 1991, could have transferred the government's point of view to the nation. The Peace Movement, the Greens and Alternative Groups would not have changed their mind. However the 'silence majority' of the Germans would have received a political orientation which might have helped to make their own assessments. Finally, the clear decision to support Turkey by German involvement in the Allied Mobile Force-Air and anti aircraft units, marked the end of their political abstention. However, this was done against strong opposition from the left.

The opposition was full of consternation and horror. They continued to pressure the government to demand an immediate cease

fire to continue diplomatic efforts. These political demands may at first seem simply a lack of realism driven by a strong desire for peace. But when viewed in the context of the attempt to block the deployment of German forces in Turkey, a member of NATO, it became obvious that the opposition, in particular the 'young leadership generation', was following their own thoughts of security policy. The consensus for a common German security policy which had been maintained for about three decades, was disintegrating.<sup>10</sup>

In January 1991, his first state of the union address to Parliament of the united Germany, the Federal Chancellor gave an remarkable speech firmly supporting the offensive of the Coalition Forces. He reminded the members of the Parliament, that the United States had defended Germany for forty years and that the unification could only have been achieved by the strong support of the US President. He sharply condemned the rallies and demonstrations which blamed the United States and the coalition partners for starting an aggression.

Addressing the future role of the reunified Germany, the Chancellor recognized its increased responsibility for Europe and the world. He stated that Germany must contribute to security and stability, even if it meant employing forces to execute the resolutions of the United Nations. He then went on to say that the constitution must be changed and that he was willing to do this.<sup>11</sup>

This declaration also covered additional areas of future

security policy and for the restructuring of the armed forces. In essence it was a visionary speech which completed the transition process in Germany and Europe.

However, two points are critical to consider. First, the statement addressing the Federal Government's position of the Gulf War would have been better if delivered on 17 January when there was a meeting in the Parliament. By not vocalizing support on the day Desert Storm began, the Chancellor missed the opportunity to provide strong pro-American leadership to his government. Second, the announcement that the constitution must be changed, constrained the government's freedom of action by focusing on one option only. In effect this announcement stopped people from thinking about other solutions.

The challenge that a unified, sovereign Germany must share responsibility and risks with its Allies even if it meant deploying 'out of area' hit the country unprepared. This was a crisis in German security policy. The politicians now had to clear all the ideological obstacles, to understand the historical restraints, and solve the legal constraints.

#### MORALISM - OBSTACLES OF GERMAN POLICY

The demonstrations and rallies became fewer and finally disappeared long before the cease fire was agreed. Many people were aware that their fear had been really unfounded and that their emotions had been misused to support unintended political

ideas. The attacks on Israel by Iraqi Scud-missiles was the the most convincing argument for the necessity of launching the offensive operation against Iraq. However, the loss of support of a considerable part of the population, does not mean that the 'left' political spectrum has given up their traditionally pacifist ideals.

During the Social Democratic Party Congress in May 1991 it was difficult to achieve consensus to participate even in UN 'blue helmet' missions. That was the maximum extent to which the Social Democrats were willing to agree. This agreement must be considered in context of the party's resistance to the deployment of German forces in Turkey during the Gulf War. The Social Democrats seriously argued that Turkey had provoked the need to be supported by NATO because of its support of Desert Storm. In addition to this, they even requested that German deployments to fulfil NATO obligations must to be authorized by a two-third majority of the parliament.<sup>12</sup>

This behavior underlines the thesis that the consensus concerning the German security policy was deteriorating. But it also stresses a highly moralistic attitude in which peace is regarded as an absolute value. From this point of view basic values such as liberty, justice and solidarity are subordinated to 'peace at all cost'. Because of this unconditional preference, the question of 'war or peace' is normally not to be asked. The answer must always be peace. This kind of thoughts absolutely disregard the fact that liberty and justice are prerequisites to

qualify peace as a value. This attitude had its origin in the early seventies. The motto 'better red than dead' expressed in this time reflected the protest of the young generation against war, and all defense efforts.

Although today this pacifist attitude represents only the thoughts of a minority, the potential of this group should not be underestimated. They occupy positions in politics, schools and universities as well as in trade unions and churches. Their influence in politics and society is therefore relevant.

Pacifism as part of the spectrum of different convictions should not cause concern. The right to different and contrary opinions is self-evident and it is even essential for democracies. However, the condemnation of using military means to restore the integrity of Kuwait and blaming the United States as the aggressor showed an arrogant disregard of reality.

Ignoring the facts that: Iraq started this war in August 1990, all diplomatic efforts failed, and the employment of the Coalition Forces was authorized by the UN, gave evidence of a ridged kind of moralism. This attitude manifests itself in an ethical mind that is more guided by self-righteous and prejudices rather than moral courage and sense of responsibility.

Continuing a policy based on those ridged principles damages not only the reputation, it destroys confidence, threatens the integration process and will finally lead to political isolation.<sup>13</sup> To isolate an unified Germany in the center of Europe can neither be in the interest of Germany nor in

the interest of its Allies and the other European neighbors. As history teaches us, German 'separate ways' have disturbed peace and have often led to war.

Considering this historical knowledge, there should be no doubt among the politicians that isolationism is to be prevented. Overcoming the obstacles caused by an exaggerated moralism is an important step to achieve this goal.

#### RESTRAINTS CAUSED BY RECENT GERMAN HISTORY

In spite of the demonstrations, heated discussions on security policy, and the political aims of the opposition. Germans are not a pacifist people. A majority considered operation Desert Storm a just and legitimate cause. According to polls, published on 21 January 1991, 81.4 % of the German population advocated the military employment. Even more people refuted the actions of the peace movement in Germany. However, a military employment of German armed forces in the Gulf War was also opposed by the majority.<sup>14</sup>

Why this reluctance to use German force? A look at the last forty years of anti-militarism in Germany might help to explain. The attitude of society towards the use of armed forces for the last forty years has been determined by caution rather than an unconditional consent. There is no doubt that this is influenced by the legacy of recent German history.

Two World Wars within 25 years resulting in innumerable

civilian and military victims, horrible atrocities and war crimes done by Germans and in the name of Germany are still a heavy burden. These memories make Germans today reluctant aggressors.

After the unconditional surrender in World War II, Germany faced the end of the National-Socialistic Dictatorship but also the end of its existence as a German 'Reich'. In accordance with the Potsdam Commitment, agreed to by the four victory powers in August 1945, Germany lost its territory East of the rivers Oder and Neisse and was subdivided into four occupation zones. To prevent a revival of militarism in Germany, a major concern, the four victory powers decreed complete disarmament and demilitarization.<sup>15</sup>

The emerging tensions between the Western Allies and the Soviet Union led to the Cold War with the division of East and West Germany as one of its results. The Germans in East and West focused on survival. As an additional challenge for the West Germans, they had to integrate millions of German refugees driven out from the former territory beyond Oder-Neisse-Linie, the new Eastern border.

Strongly supported by the Marshall-Plan, the new Federal Republic concentrated its efforts on restructuring the whole economy. The new economic structure would be the foundation to save each individual and the entire country. During this years of restructuring neither citizens nor the government desired to become a military power again.

The demilitarization was not only accepted by the people.

they took this on as their own political conviction in post war Germany. Militarism had to be abandoned forever. The first government of the Federal Republic, the opposition parties and the entire population vowed that German soil would again never sow the seed of war.

These thoughts were written in the 'Basic Law' - the constitution of West Germany. Article 26 of the constitution states that any action done with the intention "to prepare for war of aggression" is forbidden and would be penalized.<sup>16</sup>

In contrast to the era after the First World War, where revenge and nationalism grew in Germany, the mood in the population and the political intention in the Federal Republic focused on reconciliation only. The distraction of the 'Third Reich' was considered more as a liberation rather than as a defeat. The essential political goals of the young Federal Republic were identified: the recognition as a sovereign country, unification in peace and freedom as well as security by Western integration.

At the outbreak of the Korean War in 1950, the United States requested a West German military contribution that could be used to improve Western security. Coming only five years after the Second World War and Germany's totally disarmament, this request was not appreciated by the Federal Republic nor by West European nations. The political resistance to this proposal was understandable.

The first Federal Chancellor, Dr. Konrad Adenauer, knew

that the membership in NATO, which required raising German troops, would be necessary to achieve these political goals. He consequently pushed for both membership in NATO and the rearmament of West Germany. However, it was against extremely strong resistance from opposition parties and a considerable part of the population.

Because of his convincing leadership, Konrad Adenauer overcame the polarization of the German society caused by the strong disputes about this security policy. At the Parliamentary elections in 1953, the Christian Democrats achieved a tremendous victory. They formed a coalition representing a two third majority in the Parliament which was necessary to change the Basic Law. They changed the constitutional laws which allowed the passage of Federal laws to establish armed forces.

In 1954 Germany became a member of the North Atlantic Alliance and the Western European Union (WEU). Simultaneously, the Occupation Regime of the three Western powers in West Germany was dissolved and almost complete sovereignty reinstated. Just one year later, the 'Bundeswehr' was created as the military contribution to German NATO membership. To the outside world this newly created armed forces were a symbol of German sovereignty. However, to the German people the 'Bundeswehr' was a safeguard against the threat on the inner German border.<sup>17</sup>

Driven by the desire to strengthen Western defense, but also to contain potential German militarism, the Alliance strongly determined the structure and the nature of the new

German armed forces. According to its mission within the NATO and in particular with regard to French concerns, the 'Bundeswehr' was tailored to be strictly defensive. In addition to the clear defensive structure, the Federal Republic constrained itself by renouncing nuclear, biological and chemical weapons, and a supreme command with national command and control.

The Federal Republic became a reliable partner contributing the largest conventional force to defend the Central Region. However, the Germans held that the Central Region meant only German territory. The major threat directed against Germany led to the focus on the defense of the Federal Republic rather than a NATO area.

Nevertheless, it was exactly these very restraints, reflected in the Basic Law, which tied the German government to commit its armed forces outside of the NATO area.<sup>18</sup>

Germany's integration into the Western Alliance 37 years ago required them to raise armed forces as their contribution for the common defense during the Cold War. Now, following the end of the Cold War, the question of integration or isolation is emerging again. Risk sharing which means commitment of armed forces alongside its allies will be the price for an future integration. Strong leadership may be able to solve this decisive question like it was done by Konrad Adenauer about four decades ago.

Today these self-imposed restrictions on the use and the character of the armed forces have been translated by amendment's

into the Basic Law. As we shall see, the content of the Basic Law has lead to great problems in concretely defining German security policy.

### THE AMBIVALENCE OF THE BASIC LAW

The impact of the Gulf War, reinforced by public opinion in Allied countries, convinced the majority of Germans that a unified Germany had to assume more responsibility. The employment of the 'Bundeswehr' to accomplished UN-missions was considered as an essential part of those future obligations.

While the type of military commitments are still controversial, there is a broad consensus among the politicians that any military commitments 'out of area' must be legally endorsed. However, there is a different opinion over the legal basis. One side says that the Basic Law does not allow for 'out of area' military missions for the German armed forces and so, the Basic Law has to be changed. The other political view, however, does not see any constraints in the constitution. However, they also want to change or supplement the Basic Law in order to achieve a clear interpretation concerning this subject.<sup>19</sup>

The central constitutional issue about the possible employment of armed forces is found in articles 24 and 87a of the Basic Law (BL). The following analysis of these articles in their historical and political context may help understand why there

are different interpretations concerning the employment of German forces 'out of area'.<sup>20</sup>

In the 23 May 1949 'Basic Law for the Federal Republic of Germany', there was only one article related to security policy. Article 24 deals with entry into a collective Security System. Paragraph 2 of this article states:

"(2) For the maintenance of peace, the Federation may enter a system of mutual collective security: in doing so it shall consent to such limitations upon its rights of sovereignty as will bring about and secure a peaceful and lasting order in Europe and among the nations of the world."<sup>21</sup>

This article underlines the constitutional concept of the Federal Republic as an open state willing to be integrated in the international community and for inter-state cooperation. If the constitution expressly permits joining an international security system, even at the loss of some sovereign rights, logically it must allow the state to meet all the obligations which are required by that membership. Additionally a differentiation between civilian and military obligations is not reasonable. So it is argued that membership in the United Nation also requires participation in military missions.<sup>22</sup>

Yet, the Federal Republic of Germany has refused all these obligations, even the employment of armed forces in 'peace - keeping' operations. If one looks only at Article 24, it appears that there is no explicit constitutional restraint prohibiting 'out of area' operations. Indeed, notable constitutional lawyers state that this article was created expressly for Germany's

involvement in the United Nations.<sup>23</sup> Nevertheless, for decades, the official announcement that the Basic Law did not sanction those missions, has been accepted. This argumentation raises the question on what legal basis did the Federal Republic make the decision to join the NATO and WEU, accepting the corresponding military obligations?

In 1956, BL Article 87a became the second and last constitutional statement on security policy. This article became the justification for Germany's reluctance to employ forces 'out of area'. According to this constitutional article, the major purpose of the 'Bundeswehr' and its right to exist is for defense.<sup>24</sup> Paragraphs 1 and 2 of this article state:

- "(1) The Federation shall establish Armed Forces for defence purposes. Their numerical strength and general organizational structure shall be shown in the budget.
- (2) Apart from defence, the Armed Forces may only be used to the extent explicitly permitted by the Basic Law."<sup>25</sup>

If the employment of armed forces is limited for 'defense' only, it was reasoned that 'out of area' employment of forces was against the constitution.

However, a definition which explains the term 'defenses', is not given by the constitution. Article 115a, para 1 of the Basic Law merely says that the 'case of defense' is to be established by the Parliament when the territory of the Federal Republic is violated by an armed attack. The intention of this article is not to define the term 'defense', its purpose is only to determine the procedure and the preconditions necessary to

establish the 'case of defense'.<sup>26</sup>

This case can be made that 'out of area' employment may be 'defensive' if that employment defends a group to which Germany belongs. The issue revolves around international law and how the international community see an act. The constitution actually supports this reasoning in Article 25.

"The general rules of public international law shall be an integral part of federal law. They shall take precedence over statutes and shall directly create rights and duties for the inhabitants of the federal territory."<sup>27</sup>

This is a clear subordination of all national laws to the international law. Many scholars specializing in constitutional law refer to the Charter of the United Nations. Article 51 of this document gives each member of the United Nations "...the inherent right of individual or collective self-defense if an armed attack occurs..."<sup>28</sup>

An isolated consideration of BL Article 87a, and Article 51 of the UN Charter would limit the military employment of German armed forces to self-defense. The participation in collective defense operations can only be possible, if the military employment is directly related to the defense of the Federal Republic.<sup>29</sup>

This view is in conflict with the obligations set out in the North Atlantic Treaty. In accordance with its Article 5, the NATO members "...agree that an armed attack against one or more of them...shall be considered an attack against them all..." The

Article continues that each member will assist the country or countries being attacked "...by taking...such action as it deems necessary, including the use of armed force..."<sup>30</sup>

Therefore, both articles of the Basic Law support the constitutional foundation to assist other members of NATO by the employment of armed forces. BL Article 24 which allows joint collective security systems, and Article 87a which limits the use of armed forces for the purpose of defense, are used to support this case.

However, renowned experts in constitutional law hold the position that BL Article 24 also allows Germany to take part in actions to keep and to make peace. That actually means to take part in operations like Desert Storm.<sup>31</sup> In analyzing this article, the broad interpretation of many of the experts becomes more logical than the narrow view point of the politicians.

In fact, there are no constraints on individual or collective self-defense nor are actions limited to a certain region. In BL Article 24 the purposes of 'entry into a collective security system' are pointed out as "For the maintenance of peace..." and "...to bring about and secure a peaceful...order in Europe and among the nations of the world."

The preceding discussion shows the tension between BL Articles 24 and 87a. The contrast is between the general language of the Article 24 and the concrete, very definite dictate of the Article 87a. However, depending upon one's political perspective, one can choose which article to focus on.

Strict or liberal interpretation of the constitution may be a matter of conveniences.

In summary, the ongoing debate about the employment of the 'Bundeswehr' underlines that the advocates and opponents of an 'out of area' employment refer to BL Articles 24 and 87a by putting one of them in the center of their considerations.<sup>32</sup> Indeed, the ambivalence of the Basic Law allows different interpretations. This will continue until the constitution is changed, supplemented or the Supreme Court decides a case in point.

On the other hand, a constitution cannot rule every detail: it should only provide principles which form the framework for politics. Therefore, the politicians are challenged to utilize the freedom of action given by the constitution. That means political discussion and debate in order to change the public opinion. But it also demands leadership to carry through the decisions which are necessary. We will now see that politics has further constrained security policy.

#### POLITICS PLAYS A MORE IMPORTANT ROLE IN SECURITY POLICY

The excited and anxious attitude of many Germans during the first period of the Air Campaign underlined that the government had neglected to prepare the public on what to expect from Iraqi aggression. It was clear that there were only two probable solutions: Iraqi withdrawal or the restoration of the 'status quo'

ante' by the employment of the Coalition Forces. An unmistakable statement, on what constituted the Federal Republic's position and obligations, was missing.<sup>33</sup>

However, these were not merely short-term issues which could have been corrected within a period of month. The roots for this 'leave me out' attitude go back to the post-war era, when after a short term of demilitarization German rearmament could only be accomplished against considerable resistance in politics and society. For too long the German consensus on rearmament was based on the individual and collective self-defense. This military solution responded to the political persuasion in the Federal Republic as well as to the intention of the Allies.

In the early eighties, there was pressure on the Federal Government to take part in UN 'peace-keeping' missions. Also, the United States asked Germany to join a multi-national naval task force conducting sea control in the Persian Gulf. But all requests for an employment of German armed forces were refused based on the preceded restraints imposed by the Basic Law. Instead of direct participation, Germany compensated by giving logistic, transportation and finance support.

These decisions were based on recommendations worked out by the Ministries of Defense, Justice, Internal, and Foreign Affairs and submitted to the Federal Chancellor Helmut Schmidt in 1981. The resolutions of the Federal Security Council of 1982 confirmed this restrictive interpretation of the Basic Law. The Christian-Liberal coalition government under Federal Chancellor Helmut

Kohl, which take power in October 1982, also recognized this policy. Thereby the discussion within the government was completed.<sup>34</sup>

These self-constraints of the German security policy were supported by a broad majority throughout all political parties and the Federal governments. Besides the constitutional concerns, there were a couple of political reasons which reinforced the German attitude.

First, it would not be in the interest of the Federal Republic to become involved in the decolonization conflicts of the European powers which occurred in the fifties and early sixties. A further concern revolved around the division of Germany. No one wanted a situation where East and West German troops would confront each other while employed in 'out of area' missions. Another, simple reason was the fact that the Federal Republic as well as the German Democratic Republic did not achieve full sovereignty until unification on 3 October 1990. Therefore, freedom of action in security and foreign policy matters was constrained for both German states.

The 'Four Powers' terminated "...their rights and responsibilities to Berlin and to Germany as a whole..." in September 1990 when the 'Treaty on the final settlement with respect to Germany' was signed.<sup>35</sup>

The reluctance to use military force was originally caused by historical restraints and the particular status of the Federal Republic as a divided country with limited sovereignty. German

security policy has been based on political decisions that used than constitutional constraints as justification for those decisions.

A resolution of the Federal Security Council in 1982, shifted the emphases to the Basic Law. The previous political question became a constitutional subject. According to this resolution, the employment of German forces outside of NATO area should only be allowed if a conflict occurred which was both an armed attack on the Federal Republic and a violation of international law.<sup>36</sup>

It seems to be remarkable that the legal foundation as exclusively referred to BL Articles 87a and 51 of the UN Charter. BL Article 24 played a marginal role, it was only considered in order to legitimize the obligation to assist the Allies. Beyond this even 'peace-keeping' missions, were strictly refused.<sup>37</sup>

A direct connection between the NATO area (Article 6 of the North Atlantic Treaty) and the constitutional provision concerning the employment of the 'Bundeswehr' is not evident. It is also obvious that the North Atlantic Treaty is not an element of the Basic Law. In addition, Article 6 of the North Atlantic Treaty does not address the operation of NATO forces. It only addresses when and where the obligation to assist begins.

The area in which military operations are to be conducted is not limited by the treaty. In essence, neither the UN Charter nor the North Atlantic Treaty constrain geographically the use of armed forces. and the Basic Law does not mention the terms NATO

or NATO area in any article. So, a judicial causal connection is not given between the employment of German forces and the relevant tenets of the UN Charter, the North Atlantic Treaty and the Basic Law. However, the restrictive interpretation by the Federal Security Council can therefore be considered as an attempt to give constitutional legitimacy to a political decision.<sup>38</sup>

#### POSITION OF THE CHRISTIAN-LIBERAL COALITION

In the second half of the 1980s, the discussion on a German participation in UN missions emerged again. The Chairman of the United Nations, Perrez de Cuellar, started this discussion when he suggested that the Federal Republic should take part in peace process in Central America. Throughout the Federal government there was no doubt that these requests could no longer be refused. Because of its political importance as one of the leading economical powers, the Federal Republic had to take on more responsibility in the world.

While Federal Chancellor Kohl insisted that the Basic Law had to be changed before the 'Bundeswehr' could be committed to UN missions, the N-Minister of Defense, Professor Rupert Scholz, did not consider that there were any constitutional concerns.<sup>39</sup> This statement is the more remarkable as Professor Scholz is an eminent scientist lawyer specialized in constitutional and international law.

The Gulf War made it necessary to change the policy of a restricted interpretation of the constitution. It became also obvious that the participation in UN missions would require both, 'peace-keeping' and 'peace-making' operations. Therefore, the previous focus on 'blue helmet' missions was given up and the entire spectrum of military employments related to the UN Charter was considered. However, the government agreed that the legal endorsement of action had to be achieved by an amendment of the Basic Law.<sup>40</sup>

Within the coalition parties, the question of how the Federal Republic could take on more political responsibility in the world rose by the end of the eighties. But it was not a broad discussion. Only study groups dealing with security policy came up with proposals regarding 'out of area' employments.

The study group 'Foreign Policy' of the Union Parties (CDU/CSU) developed the most far-reaching proposals, where the Federal Republic would take more political responsibility in the world, even in a crisis out of the NATO area. Those engagements were not only desirable but also in accordance to the Basic Law. But these security policy proposals did not succeed at this time. The resistance of the Liberal Party (FDP), the coalition partner, and even within the Union parties, was too strong.

The Liberal Democrats themselves still insisted on a restrictive interpretation of the Basic Law. Participation in 'peace missions' were additionally refused by political reasons.<sup>41</sup>

These attitudes explicitly point out that the majority within the three coalition parties did not seriously contemplate a German military commitment for outside of the NATO area at this time. But this is not surprising. It only underscores world political isolationism which was practiced by all governments of the Federal Republic throughout the 40 year history.

Because of their status as a divided country and as a front line state during the period of Cold War, Germany's allies might have tolerated this policy. However, the unification of Germany fundamentally changed the political environment. Germany is now fully expected to assume its responsibilities in the world. In other words, the role of "the giant who wants to stay as a dwarf"<sup>42</sup> will no longer be accepted.

The Gulf War accelerated the process within the coalition parties to review the paradigm of their security policy. The three parties changed their previous opinion by recognizing the responsibility of unified Germany. In the beginning of 1991 the CDU/CSU and the FDP unmistakably advocated for a larger commitment of the 'Bundeswehr' to new missions in accordance to Charter of the United Nations. The Liberals clearly voted for an amendment to the Basic Law, but the Union parties did not believe a constitutional change was necessary.<sup>43</sup>

#### POSITION OF THE SOCIAL DEMOCRATIC PARTY

By the end of 1987, the study group 'Security Policy of

the Social Democratic Party proposed 'out of area' employments. as had the 'Union parties' study group before it. However, it was recommended that German participation in the UN operations would be only for 'peace keeping' missions. Even this limited recommendation did not succeed. The party Congress in 1988 voted down this proposal after a violent debate.

The question on future employment of German armed forces split the Social Democrats deeply. Even the discussion during and after of the Gulf War could not really lead to a rapprochement of the advocates and opponents concerning participation in UN missions.<sup>44</sup>

The close decision to participate in 'peace keeping' missions by the party Congress in May 1991 may therefore be considered as the lowest common denominator rather than as a clear political intention to take more international responsibility. There is still a considerable number of politicians for whom this decision marked the most extreme point they were willing to go. However, after this party Congress, there were fewer comments by SPD politicians who strongly supported combat missions under the umbrella of the United Nations.

The Parliament's debate on the future of UN missions of the German armed forces on 16 January 1992 stressed again that the Social Democratic fraction had not changed their attitude. They insisted on 'blue helmet' missions only and refused combat missions out of the NATO area.<sup>45</sup> In addition to this they

demanded. as a consequence of the collapsed Soviet Empire, to shift the emphasis of security policy toward a participation in developing programs for the 'Third World'.<sup>46</sup>

This closed attitude shows that the fundamentals of the Social Democrats' security policy of military self-constraints will continue. The obligation to assist other NATO members in accordance with Article 5 of the North Atlantic Treaty could be viewed even more restrictively than in the past. The example of 'Turkey' during the Gulf War demonstrates this.

The resolution on a German participation in 'peace keeping' missions did constitute limited progress. Social Democrat proposals for constitution change contain numerous details, all of which are constraining. Their intention is that Germany may make military units available to the UN Security Council for 'peace-keeping' missions. However, these units, consisting of volunteers, are only to be equipped with small arms for self-protection. The following condition are also to become part of the Basic Law. German troops will be employed if; the UN Security Council requests them, all states involved in the conflict agree, and the German Parliament allows the 'peace-keeping' mission.<sup>47</sup>

These are extremely detailed rules which do not fit the norm constitutional practice of establishing only the principles for political action. This proposed amendment to the Basic Law is designed more to prevent, rather than to allow. The constitution would actually inhibited the government's freedom of action by introducing a Parliamentary hurdle and limiting the choice of

military means. Even the employment of German minesweepers to clear international waters outside of the NATO area, as was done after the Gulf War, would raise some constitutional problems.<sup>48</sup>

Therefore, the proposal of the Social Democrats seems to be more a political 'maneuver' to pacify internal party opposition than a serious intention to provide the foundation for a new German security policy. This impression that the SPD has no intention of solving the security issue is reinforced by a statement of Oskar Lafontaine, the Deputy Chairman of the SPD. He first said NATO should be extended to East Europe, including the states of the former Soviet Empire.

The key question regarding the security guarantee and if Germany will employ armed forces to meet obligations toward its 'new allies', has not been answered. However, previous to his statement on extending NATO, Oskar Lafontaine had suggested dissolving NATO. He also opposed the deployment of German units to support Turkey, and advocates for strictly 'blue helmet' missions. Considerable contradictions are therefore obvious. So one can see that the present security policy of the Social Democratic Party is missing a clear concept.<sup>49</sup>

Some fundamentals, however, are particularly significant in attempting to explain this phenomena. First of all, there is the idealistic and euphoric idea that conflicts could be solved only by peaceful means. This attitude ignores the fact that this desirable goal, even if it is seriously attempted, cannot always be achieved. Therefore, a lack of realism contributes to those

political thoughts. Another important element is the fundamental distrust of the SPD toward any military power. This attitude is probably caused by the intention to avoid a revival of militarism which dominated politics in recent German history. But it is also strongly influenced by the pacifist and anti-American policy of the 'youth revolution' back in 1968.<sup>50</sup>

In contrast to the Union parties and the Liberals, the Social Democrats were not able to create a new security policy. They tried to continue a policy criticized as "provincialism". This policy does not meet growing German responsibility and damages the reputation of Germany as a reliable security partner.<sup>51</sup>

#### SUMMERY AND RECOMMENDATIONS

Based on Kohl's state of the union address of January 1991, the Federal Government presented a clear concept of what they wanted in security policy. However, they did not establish all procedures to implement a far-reaching program. In this concept, NATO is still considered the decisive, and hence, most important foundation for a stable and secure environment in Europe. Beside having greater political and economical functions, the Alliance will maintain its long-standing tasks to deter any aggression, to maintain the strategic balance in Europe, and to repulse any armed attack conducted against the territory of its members.

These military tasks are to accomplish by fewer but more

integrated armed forces. The creation of multinational corps as the future basis for the defense of NATO Europe, impressively underlines the political will of a common security policy. This is also true for the proposed German-French corps as the nucleus of 'European Forces' which can be assigned to NATO or to the WEU, depending on the situations.<sup>52</sup>

The new framework of security policy shows the major tasks of the 'Bundeswehr' which were currently outlined by Federal Minister of Defense, Dr. Gehard Stoltenberg:

- The German armed forces will contribute to stable and calculable security structures as part of an all-European balance of military potentials.
- They must be able and ready for defense in order to protect the territorial integrity of Germany and its allies.
- They must be prepared for collective employments 'out of area' accomplishing tasks of international peace securing. and conflict solving.<sup>53</sup>

This clear position meets exactly what the allies and the chairman of the United Nations expect from Germany. However, it is still a concept which must be transformed into a real and practical policy. Considering the current status of the dispute on German 'out of area' deployments, there are the several options to establish a new security policy.

1. An amendment of the 'Basic Law' which explicitly allows for the deployment of German armed forces in accordance with the UN Charter. This means these forces take part in 'peace-keeping'

as well as in 'peace-making' missions.

This option meets the growing political responsibility of the Federal Republic and also meets the requirements of the FDP, the coalition partner. But it is questionable whether the Social Democrats will deliver the two-third majority, necessary to change the Basic Law. A further disadvantage is that this solution constrains 'out of area' missions to actions of the United Nations exclusively.<sup>54</sup>

2. A clarification of the Constitution by supplementing BL Article 87a with the clause that the German armed forces "Apart from defense 'and in the framework of collective security systems'...may only be used ...permitted by the Basic Law."<sup>55</sup>

This option contains no constraints and therefore optimizes the solution. The government maintains freedom of action to participate in missions of different collective security systems to take vital national and supra-national interests.

Additionally, this solution supports the judgement of many scientists that the constitution does not need to be changed. This proposal will dissolve the ambivalence of the BL Articles 24 and 87a. But even this 'clarification' can only be accomplished by a two-third majority, which will be difficult to achieve.

3. Perhaps not the best solution, but the most achievable one, is to have no amendment and no clarification of the constitution. This option means the government decides to use the armed forces according to the entirety of existing Basic Law and international law. It is important that we do not focus one law

over the other. This option can be considered as an alternative to the second recommendation, if the Social Democrats insist on 'blue helmet' missions.

There is no doubt that a constitutional clarification would be the best solution from a political point of view. It would be a face-saving measure for all politicians who used the constitution to justify the German reluctance to 'out of area' employments. In addition, the Parliamentary process to change or clarify the Basic Law would contribute to building a new and common foundation for a future German security policy. But unfortunately, at this time, this is unlikely to happen.

Time is getting short, however. In January 1991, the Federal Chancellor promised in his state of the union address, Germany will take more responsibility in the world. The United Nations and Germany's allies are still waiting for the implementation of this political intention. As a result of the Maastricht Summit, Europe is creating a common foreign and security policy. At the same time German is restructuring their entire armed forces.<sup>56</sup> How much longer can the government wait to resolve this dilemma?

## ENDNOTES

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<sup>2</sup> Karl-Heinz Kamp, "Die Debatte um den Einsatz deutscher Streitkraefte ausserhalb des Buendnisgebietes", Forschungsinstitut der Konrad-Adenauer-Stiftung, (Sankt Augustin, March 1991), 6-10.

<sup>3</sup> Ronald D. Asmus, "Fragen unter Freunden", Die Zeit, (Nr 8, 15 February 1991), 4.

<sup>4</sup> Kamp, 6-10.

<sup>5</sup> Guenther Gillessen, "Deutsche Selbstbeschaeidigung", Frankfurter Allgemeine Zeitung, (5 March 1991).

<sup>6</sup> Dieter Wellershoff, "Deutsche machen Angst zur nationalen Tugend", Die Welt, (12 March 1991). Also: Ronald D. Asmus, "Fragen unter Freunden". Die Zeit, (Nr 8, 15 February 1991), 4.

<sup>7</sup> Joachim Sobotta, "Schluss mit dem Selbstmitleid", Medien im Golfkrieg, journalist, (3/91), 12.

<sup>8</sup> Carl von Clausewitz, "On War". edited and translated by Michael Howard and Peter Paret. (Princeton, N.J., 1984), 117.

<sup>9</sup> Ulrike Kaiser, "Die Ohnmacht der Medien", journalist, (3/91), 3-8. Also: Lynn Packer, "Vom anderen Planeten", journalist, (3/91), 22-24.

<sup>10</sup> Eckehard Fuhr, "Selbstsuechtig. Die Sonderrolle der Deutschen", Frankfurter Allgemeine Zeitung, (25 January 1991).

<sup>11</sup> State of the Union Adress by Federal Chancellor Dr. Helmut Kohl to the 'Bundestag' on 30 January 1991, Presse - und Informationsamt der Bundesregierung, (Nr. 37/91), 1-2, 38-39, 50-52.

<sup>12</sup> Geoffrey van Orden, "The Bundeswehr in transition". Survival, (vol. XXXIII, no 4, July/August 1991), 354-356. Also: Joachim Fest, "Auf dem Hochsitz der Moral", Frankfurter Allgemeine Zeitung, (24 January 1991).

<sup>13</sup> Fest. Frankfurter Allgemeine Zeitung. (24 January 1991).  
Also: Gillessen. "Zwischen allen Stuehlen". Frankfurter Allgemeine Zeitung, (31 January 1991).

<sup>14</sup> This is the result of a poll by the 'Wickert Institut'. published on 21 January 1991, quoted from: Kamp. 50.

<sup>15</sup> Van Orden, 353-355. Also: Helmut Guenther Dahms, "Der Zweite Weltkrieg", Schriftenreihe Innere Fuehrung, Bundesminister der Verteidigung, (Abteilung Streitkraefte I 6 . 1966), 263-272.

<sup>16</sup> The Basic Law of the Federal Republic of Germany, Article 26, (translation), Press and Information Office of the Federal Government, (Wolfenbuettel, 1989), 24. (hereafter referred to as "Basic Law")

<sup>17</sup> Keith B. Payne and Michael Ruehle, "The Future of the Alliance: Emerging German Views", Strategic Review, United States Strategic Institute, (Washington, D.C., Winter 1991), 40. Also: "Politische Geschichte unserer Zeit", Schriftenreihe Innere Fuehrung, Bundesminister der Verteidigung, (Abteilung Streitkraefte I 6 1966), 43-88.

<sup>18</sup> Van Orden, 352-356.

<sup>19</sup> Robert Leicht, "Wann darf der Helm blau oder gruen sein? Die Bundeswehr und der Frieden in der Welt.", Die Zeit. (6 December 1991). Also: Kamp. 6-11.

<sup>20</sup> Kamp, 12.

<sup>21</sup> Basic Law, Article 24, 24.

<sup>22</sup> Kamp, 14.

<sup>23</sup> Ruediger Gottschalk, "Klare Grenzen fuer deutsche Blauhelme", Handelsblatt. (19 December 1991).

<sup>24</sup> Kamp, 12-14.

<sup>25</sup> Basic Law, Artigle 87a, 54.

<sup>26</sup> Kamp, 12-14. Also: Basic Law, Article 115a, 77.

<sup>27</sup> Basic Law, Article 25, 24.

<sup>28</sup> Kamp, 13-15.

22 Ibid

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<sup>48</sup> "Ruecksicht auf Ratlose", Frankfurter Allgemeine Zeitung, (17 January 1992).

<sup>49</sup> Ibid

<sup>50</sup> Stephen F. Szabo, "Generationenwechsel in Europa: Auswirkungen auf das westliche Buendnis", Schriftenreihe Innere Fuehrung, Heft 6/1983, Bundesminister der Verteidigung, Fuerungsstab der Streitkraefte I 3, (Koeln 1983), 25-27.

<sup>51</sup> Karl Heinz Bohrer, "Provinzialismus (III). Das Vacuum". Merkur. Deutsche Zeitschrift fuer europaeisches Denken, (Heft 4. 45.Jahrgang, April 1991), 348-356.

<sup>52</sup> Gerhard Stoltenberg, "Perspektiven der Sicherheitspolitik und Zukunftsaufgaben der Bundeswehr", Soldat und Technik, (Frankfurt am Main, January 1992), 9-12.

<sup>53</sup> Ibid

<sup>54</sup> Kamp, 47-48.

<sup>55</sup> Kamp, 49. Professor Rupert Scholz, former Federal Ministerf of Defense, proposed to clarify the Basic Law in this way.

<sup>56</sup> Detlef Puhl, "Truppen fuer die WEU", Stuttgarter Zeitung, (12 December 1991).

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